

Time of Hearing: 1:00 P.M.

*To be argued by*  
David W. Grissom, Jr.

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**Docket No. 05-0660**

**Illinois Commerce Commission  
STATE OF ILLINOIS**

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**GLADYS KENDRICK**

*Complainant,*

*against*

**NICOR GAS COMPANY,**

*Respondent.*

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**COMPLAINANT'S BRIEF AND APPENDIX**

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## **Complainant's Brief**

### **Introduction**

By permission of the Honorable Eve Moran, granted January 18, 2006 for continuance of hearing to March 3, 2006, Gladys Kendrick, complainant, makes the following allegations against NICOR Gas Company (hereinafter NICOR), respondent: 1. That NICOR submitted complainant incorrect bills during the period October 2002 to June 2003 containing \$388.47 in overcharges which she paid and is now due a full refund under 220 ILCS 5/9-252.1, 2. That NICOR submitted complainant incorrect bills during the period February 2002 to September 2005 containing \$1,451.86 in overcharges which complainant paid in part and is now due a refund of \$188.74 and cancellation of the remaining amount of \$1,263.12 under 220 ILCS 5/9-252.1, and 3. NICOR committed a continuing violation against complainant that causes the statute of limitations under 220 ILCS 5/9-252.1 to begin to run from date of last injury, or September 8, 2005.

### **Issues Presented**

1. Whether certain bills submitted by NICOR to Ms. Kendrick during the period February 2002 to September 2005, contained herein in the Appendix, are overcharges under 220 ILCS 5/9-252.1?
2. Whether the statute of limitations under 220 ILCS 5/9-252.1 begins to run from September 8, 2005 because Ms. Kendrick is alleging a continuing violation that gives rise to the Illinois rule that statute of limitations begins to run from date of last injury or tortious act?
3. Whether Ms. Kendrick has met the statute of limitations requirement under 220 ILCS 5/9-252.1 to obtain a refund for overcharges for the period June 2003 to September 2005?
4. Whether circuit court orders and filings meet the requirement of filing with the Commission for purposes of 220 ILCS 5/9-252.1?

### **Statement of the Facts**

In January 1996, Ms. Kendrick and NICOR agreed that NICOR would not change the name on any NICOR account assigned to certain rental properties of Ms. Kendrick's unless Ms. Kendrick provided the appropriate NICOR representative with a pre-determined password. The addresses of the rental properties and corresponding meter numbers are: 144-154<sup>th</sup> Place, Calumet City, Illinois - #2931131 and 1107-9<sup>th</sup> Street, Ford Heights, Illinois - #2931131.

NICOR failed to adhere to the agreement. As a result, Ms. Kendrick paid numerous bills submitted by NICOR from March 2001 to present for gas service provided to certain former tenants who intentionally provided NICOR with false vacating dates for the purpose of getting their name removed from the gas account only to continue occupancy of the rented premises after the date given. NICOR

wrongfully removed their names upon request without obtaining Ms. Kendrick's password authorization and assigned Ms. Kendrick's name to such accounts. NICOR's failure to adhere to the agreement allowed these tenants to fraudulently receive gas service and caused Ms. Kendrick to be overcharged.

Ms. Kendrick has either paid (P), or been billed (B) the following overcharges that were incorrect due to NICOR's error in charging her for gas service provided to her tenants through their fraudulent acts and due to NICOR's failure to adhere to the password authorization agreement:

<u>Bill Date</u>	<u>Bill Amnt</u>	<u>Meter No.</u>	<u>Customer</u>	<u>Billing Error</u>	<u>P/B</u>
2/12/02	211.29cr	3385413	G. Kendrick	Credit applied to tenant's bill.	B
1/7/03	178.56	2931131	D. Moore	Billed Indlord for tenant's gas.	B
2/12/04	445.51	3385413	G. Kendrick	Tnant's bill added to Indlrd's bll.	B
8/9/04	85.35	2931131	J. Young	Billed Indlord for tenant's gas.	P
10/8/04	59.18	2931131	J. Young	Billed Indlord for tenant's gas.	B
11/4/04	39.07	2931131	J. Young	Billed Indlord for tenant's gas.	B
1/6/05	103.39	3864321	F. Medina	Billed Indlord for tenant's gas.	P
2/9/05	91.58	3864321	F. Medina	Billed Indlord for tenant's gas.	B
7/11/05	97.37	2285051	W. Brown	Billed Indlord for tenant's gas.	B
8/16/05	73.23	2285051	W. Brown	Billed Indlord for tenant's gas.	B
9/8/05	67.33	2285051	W. Brown	Billed Indlord for tenant's gas.	B

**TOTAL:** \$1,451.86

NICOR billed a total amount of \$1,451.86 in overcharges during the period February 2002 to September 2005. NICOR continues to overcharge Ms. Kendrick to present.

### **Discussion**

- I. Whether certain bills submitted by NICOR to Ms. Kendrick during the period February 2002 to September 2005, contained in the Appendix herein, are overcharges under 220 ILCS 5/9-252.1?

Yes. Each of the subject bills reflects an amount due for gas service that NICOR provided *not to Ms. Kendrick*, but to tenants of Ms. Kendrick. NICOR and Ms. Kendrick agreed in January 1996 that NICOR would not end gas service of any of her tenants unless she provided NICOR with password authorization. NICOR failed to adhere to the terms of this agreement. As a result, certain tenants of Ms. Kendrick informed NICOR of false vacating dates from their respective units and requested NICOR end their gas service on such dates. Without obtaining password authorization from Ms. Kendrick, NICOR repeatedly complied with these tenants' requests by ending the gas service in their names then placing Ms. Kendrick's name on these accounts. As a result, NICOR billed Ms. Kendrick \$1,451.86 in overcharges during the period February 2002 to September 2005.

- II. Whether the statute of limitations under 220 ILCS 5/9-252.1 begins to run from September 8, 2005 because Ms. Kendrick is alleging a continuing violation that gives rise to the Illinois rule that statute of limitations begins to run from date of last injury or tortious act?

Yes. Ms. Kendrick is alleging wrongs committed by NICOR which continued over the course of 5 years. Ms. Kendrick has alleged that NICOR failed to adhere to their password authorization agreement which resulted in repeated overcharges. That failure constituted a prolonged and continuing practice on the part of NICOR producing erroneous gas bills submitted to Ms. Kendrick. When a continuing violation is alleged, the rule in Illinois is that the statute of limitations begins to run from the date of the last injury or tortious act. *Wolf v. City of Chicago Heights*, 828 F. Supp. 520 (N.D. Ill. 1993). Therefore, the statute of limitations for Ms. Kendrick's complaint will begin to run from September 8, 2005 and will expire 2 years from that date as provided under 220 ILCS 5/9-252.1.

- III. Whether Ms. Kendrick has met the statute of limitations requirement under 220 ILCS 5/9-252.1 to obtain a refund for overcharges for the period June 2003 to September 2005?

Yes. Ms. Kendrick has met the statute of limitations requirement under 220 ILCS 5/9-252.1 to obtain a refund for overcharges for the period June 2003 to September 2005 by alleging a continuing violation (see II, *supra*), or alternatively, under a strict application of 220 ILCS 5/9-252.1:

**Any complaint relating to an incorrect billing must be filed with the Commission no more than 2 years after the date the customer first has knowledge of the incorrect billing.** Ms. Kendrick filed her initial complaint against NICOR with the Commission on June 9, 2005.

- IV. Whether circuit court orders and filings meet the requirement of filing with the Commission for purposes of 220 ILCS 5/9-252.19?

Yes. Circuit court orders and filings meet the requirement of filing with the Commission for purposes of 220 ILCS 5/9-252.19 under the continuing violation doctrine. The continuing violation doctrine allows a plaintiff to get relief for a time-barred act by linking it with an act that is within the limitations period. For purposes of the limitations period, courts treat such a combination as one continuous act that ends within the limitations period. *Selan v. Kiley, Illinois Department of Mental Health*, 969 F. 2d 560 (7<sup>th</sup> Cir. 1992). The time-barred acts here are NICOR's overcharges prior to June 9, 2003, the date that the statute of limitations under 220 ILCS 5/9-252.1 would bar refunds. Ms. Kendrick filed her complaint with the Commission on June 9, 2005. Under the continuing violations doctrine the circuit court orders and filings by Ms. Kendrick's case prior to and after June 9, 2003 can be linked to the overcharges by NICOR that fall within the limitations period.

### **Conclusion**

NICOR should be ordered to refund overcharges paid by Ms. Kendrick in the amount of \$577.21 and to cancel overcharges billed to Ms. Kendrick in the amount of \$1263.12. Further, NICOR should be ordered to obtain Ms. Kendrick's authorization before ending gas service for any of her future tenants and assigning her name to such accounts.

Respectfully submitted,

David W. Grissom, Jr.  
Attorney for Complainant

